



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
SAM NUNN ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**VIA UPS OVERNIGHT DELIVERY**

Honorable Jonathan D. Brightbill  
Principal Deputy Assistant Attorney General  
U.S. Department of Justice  
ENRD  
950 Pennsylvania Avenue, NW  
Room 2141  
Washington, DC 20530-0001

Re: Civil Referral - CERCLA § 104(e) Access, 35<sup>th</sup> Avenue Superfund Site,  
Warrant to Clean Up 46 Residential Properties  
Birmingham, Jefferson County, Alabama

Dear Mr. Brightbill:

The purpose of this letter, which is related to the above-referenced referred matter, is to request the filing of a seventh Application for Administrative Warrant for Entry and Access in the U.S. District Court for the Northern District of Alabama to clean up 46 residential properties already sampled under a prior warrant. The residential properties in question are located within the 35th Avenue Superfund Site in Birmingham, Jefferson County, Alabama, where the U.S. Environmental Protection Agency has already secured access agreements and warrants and sampled over 2,000 properties. Based on the completed sampling, the EPA has determined that areas on these 46 residential properties are contaminated and need to be cleaned up.

All 46 residential properties are either vacant lots or abandoned/unoccupied residences. The Agency has concluded that a warrant is necessary to gain access to these 46 residential properties to effectively conduct the cleanup of hazardous substances and to move closer to completing the needed removal response work at the 35th Avenue Superfund Site. The EPA explains the impacts to these residential properties from the requisite cleanup activities in more detail in the enclosed declaration of On-Scene Coordinator, Subash Patel.

Enclosed for your review are copies of the: (1) draft Application for Administrative Warrant for Entry and Access; (2) Declaration by Subash Patel, the On-Scene Coordinator; (3) Declaration by Kyle Bryant, the Community Involvement Coordinator; (4) draft Memorandum of Law in Support of Application for Warrant for Entry and Access; and (5) draft Warrant for Entry and Access.

On March 3, 2014, EPA sent a Mini-Litigation Report to the U.S. Department of Justice for the 35th Avenue Superfund Site. That Report contains background information for the Site, and the matter was assigned to Davis Forsythe. Mr. Forsythe assisted in the preparation of the enclosed draft documents and is expecting this warrant request. In working with Mr. Forsythe, EPA and DOJ agreed to stagger the

administrative warrants needed for entry and access. Based on this agreement, this seventh warrant request follows the issuance of: 1) the September 3, 2016, warrant to sample 98 similar properties; 2) the February 20, 2018, warrant to sample 403 such properties; 3) the March 9, 2020, warrant to clean up 33 similarly situated properties; 4) the March 13, 2020, warrant to sample 29 properties; 5) the December 14, 2020, warrant to clean up 39 properties; and 6) the December 18, 2020, warrant to sample 20 properties. The first warrant was implemented between November 2016, and January of 2017, the second warrant was implemented between February 2018, and August 2018, the third and fourth warrants began implementation during March 2020, and were completed on January 14, 2021 (after the granting of an extension to complete the cleanup on three of the properties) and April 2, 2020 respectively. While the fifth and sixth warrants began implementation in December 2020, and are still ongoing, the fifth warrant is 51% complete and the 6<sup>th</sup> warrant is 55% complete as of today. The subject (7<sup>th</sup>) cleanup warrant application for removal response activities at the 46 properties requests limiting the entry and access period to 180 days.

The 46 properties that need cleanup are identified in Exhibit A to the draft Application for Ex Parte Warrant for Entry and Access. In determining the order of the residential properties to clean up, EPA will collaborate with the North Birmingham Community Coalition to identify properties that are most susceptible to human exposure as a result of their location. Properties within this group of 46 vacant lots or abandoned/unoccupied residences that present opportunities for children to play and potentially be exposed to contaminated soil will be prioritized and cleaned up first. Access to clean up these properties is very important since the levels of contamination on the 46 properties are consistent with the concentrations present on many of the other properties cleaned up to date.

Upon completing this removal response work, EPA will coordinate with DOJ to determine whether any additional or newly discovered properties remain that need cleanup or sampling warrants to complete the 35th Avenue Site removal action. If you need any further information, please contact the Region 4 attorneys assigned to this matter, Rudy C. Tanasijevich, at (404) 562-9557 or Chris Cole, at (404) 562-8168.

Sincerely,

**JOHN BLEVINS**

Digitally signed by JOHN  
BLEVINS  
Date: 2021.06.04 17:44:25 -04'00'

John Blevins  
Acting Regional Administrator

Enclosures

cc: Leif Palmer, Regional Counsel (w/o enclosures)  
Erika White, Acting Chief, SEIMB (w/o enclosures)  
Deniz Ergener, EPA/OSRE (w/enclosures)  
Lori Jonas, DOJ/EES (w/enclosures)

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

IN THE MATTER OF:

Civil Action No:

UNITED STATES' APPLICATION FOR  
EX PARTE ADMINISTRATIVE  
WARRANT FOR ENTRY AND ACCESS  
TO 46 RESIDENTIAL PROPERTIES AT  
THE 35<sup>TH</sup> AVENUE SUPERFUND SITE

**APPLICATION FOR EX PARTE  
ADMINISTRATIVE WARRANT  
FOR ENTRY AND ACCESS TO 46  
RESIDENTIAL PROPERTIES AT THE  
35<sup>TH</sup> AVENUE SUPERFUND SITE**

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To: The United States District Court for the Northern District of Alabama

The United States of America, by authority of the Attorney General of the United States and through its undersigned attorneys, acting at the request of the United States Environmental Protection Agency ("EPA"), hereby brings this Application ("Application") seeking issuance of an Ex Parte Administrative Warrant ("Warrant") pursuant to Sections 104(e)(3), (4) and (6) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA" or "Superfund"), 42 U.S.C. §§ 9604(e)(3) and (6), for entry and access for any officer, employee, authorized contractor, or representative of EPA, any United States Marshal for the Northern District of Alabama, as well as any other authorized Federal officer, onto and remaining on the 46 premises (all of which are vacant lots or abandoned/unoccupied residences) listed in Exhibit A to this Application (the "46 Residential Properties") located within the 35<sup>th</sup> Avenue Superfund Site ("35<sup>th</sup> Avenue Site") in Birmingham, Alabama. EPA has identified releases or threatened releases of hazardous substances including arsenic, lead, and benzo(a)pyrene at the 35<sup>th</sup> Avenue Site, and has determined that entry onto the 46 Residential Properties is necessary to conduct removal response work and cleanup activities based on sampling results obtained under prior access warrants issued by the Court which confirmed that

these 46 residential properties are contaminated with hazardous substances at levels that require further removal or remedial action.

As detailed in the Declarations of Subash Patel, U.S. EPA On-Scene Coordinator (attached to this Application as Exhibit B) and Kyle Bryant, U.S. EPA Community Involvement Coordinator (attached to this Application as Exhibit C), EPA used its best efforts to obtain voluntary authorization from property owners to conduct the necessary cleanup activities at each of the 46 Residential Properties. Despite these efforts and as set forth in the Declarations, EPA was either unable to identify the property owner, or where the owner was ascertainable, was unable to obtain a response and/or signed access authorization from the owner, for each of the 46 Residential Properties. Access to clean up these properties is important since the levels of contamination on all 46 of these properties are consistent with the elevated concentrations present on many of the other properties cleaned up to date. Patel Decl. ¶ 20.

By this Application, the United States requests to enter onto, move about, and remain on or about each of the 46 Residential Properties so that EPA and its authorized representatives can complete necessary response actions pursuant to Sections 104(e)(3), (4) and (6) of CERCLA, 42 U.S.C. §§ 9604(e)(3) and (6), as follows:

- excavating contaminated soil and properly disposing of it offsite;
- backfilling the excavated areas with clean fill material;
- performing confirmation soil sampling;
- transporting equipment onto and about each Residential Property as necessary to accomplish the above activities; and
- taking photographs of the property and surrounding areas to appropriately document the cleanup activities.

These cleanup activities are described in the Declaration of Subash Patel (Exhibit B).

Completion of cleanup activities should take no longer than five days per Residential Property, and EPA intends to work at several of the 46 Residential Properties concurrently. Should all cleanup activities authorized in the Warrant not be completed within 180 days of its issuance, the United States will, if necessary, return to the Court to seek an extension of the Warrant as to any of the 46 Residential Properties for which cleanup activities were not completed.

For the reasons set forth in the attached Memorandum of Law in Support, the United States respectfully requests that the Court issue the attached Warrant for entry and access to the 46 Residential Properties pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

Respectfully Submitted,

JAY E. TOWN  
United States Attorney  
Northern District of Alabama

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EDWARD Q. RAGLAND  
Assistant United States Attorney  
Northern District of Alabama  
1801 Fourth Avenue North  
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By:

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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

IN THE MATTER OF:

Civil Action No:

UNITED STATES' APPLICATION FOR  
EX PARTE ADMINISTRATIVE  
WARRANT FOR ENTRY AND ACCESS  
TO 46 RESIDENTIAL PROPERTIES AT  
THE 35<sup>TH</sup> AVENUE SUPERFUND SITE

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**DECLARATION OF SUBASH PATEL**

I, Subash Patel, declare as follows:

1. I am an On-Scene Coordinator ("OSC") with the Superfund Division of the United States Environmental Protection Agency ("EPA"), Region 4, in Atlanta, Georgia.
2. As an OSC, my duties include directing, managing, planning, coordinating, and reviewing activities at sites contaminated or potentially contaminated with hazardous substances governed by the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").
3. I am currently EPA Region 4's OSC for the 35<sup>th</sup> Avenue Superfund Site in Birmingham, Alabama ("35<sup>th</sup> Avenue Site").
4. EPA has managed sampling in and around the 35<sup>th</sup> Avenue Site. Properties, including residential properties, in and around Birmingham, Alabama, have been found to be impacted by the release or threat of release of hazardous substances, including arsenic, lead, and benzo(a)pyrene ("BaP"), a type of polycyclic aromatic hydrocarbon.

5. Industrial development and operations have been ongoing in the vicinity of the 35<sup>th</sup> Avenue Site since the late 1800s. These industries include, but are not limited to, foundries and kilns, scrap metal processing facilities, auto/truck salvage yards, transloading terminals, rail-yards, stone/cement/asphalt aggregate facilities, chemical plants, and facilities that manufacture foundry and furnace coke as well as coke by-products. These industries are associated with the creation or release of various hazardous substances including arsenic, lead, and polycyclic aromatic hydrocarbons.

6. EPA has investigated the past and current operations of companies located in the vicinity of the 35<sup>th</sup> Avenue Site to identify Potentially Responsible Parties who may have managed potential sources of the releases at the 35<sup>th</sup> Avenue Site.

7. EPA's Superfund Division became involved at the 35<sup>th</sup> Avenue Site after EPA's Resource Conservation and Restoration ("RCR") Division submitted residential sampling data taken by Walter Coke, Inc. near their coke manufacturing facility in Birmingham, Alabama, to the Emergency Response, Removal, and Prevention Branch of EPA's Superfund Division for evaluation of a potential removal action.

8. EPA, as well as nearby community residents, grew concerned about coal dust and other fugitive emissions visibly migrating from the nearby Walter Coke facility (now known as ERP Compliant Coke LLC), located at 3500 35<sup>th</sup> Avenue North in Birmingham, Alabama, to nearby residences and elementary schools. In July 2009, pursuant to a work plan approved and overseen by EPA's RCR Division, Walter Coke collected and analyzed surface soil samples for arsenic and BaP from 78 off-site properties. The analysis of the surface soil samples indicated that soils on 46 of those properties exhibited elevated concentrations of arsenic and/or BaP, and EPA determined that a cleanup action was warranted with respect to those 46 properties. At 16



properties where Walter Coke was able to obtain access, Walter Coke excavated soils with elevated concentrations of arsenic and/or BaP, and replaced them with clean fill, in accordance with the Residential Soil Remedial Action Work Plan-Phase I, dated July 29, 2011, that was approved by EPA.

9. As an OSC, I am charged with determining whether a removal response action is warranted at a particular site. In this case, because EPA, through its RCR Division, provided oversight to sampling that revealed a release or threat of release of hazardous substances, including arsenic and BaP above Removal Management Levels (“RMLs”), EPA determined that a Superfund Removal Site Evaluation was warranted to determine the nature and extent of contamination.

10. RMLs are chemical-specific concentrations for individual contaminants in the environment that are used to support the decision for EPA to undertake a removal action.

11. Based on their proximity to historical industrial operations in the north Birmingham area and the potential for contaminant migration via surface water and air, EPA determined that approximately 2,000 properties, predominately residential, required further investigation.

12. EPA initially obtained access agreements to 1,283 of the 2,000 properties. In total, EPA has sampled 1,970 of these properties. Sampling results revealed 653 of the 1,970 sampled properties contained elevated levels of arsenic, lead, and BaP that exceeded EPA’s RMLs.

13. As a result of these sampling activities, EPA determined that a release of a hazardous substance into the environment, as defined by Sections 101(14) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(14) and (22), has occurred at the 35<sup>th</sup> Avenue Site, as described in

the Action Memorandum, dated September 25, 2013 and attached hereto. As a result, the 35<sup>th</sup> Avenue Site qualified for a time-critical removal action, to address an immediate threat to public health or welfare or the environment.

14. Soil contaminated with arsenic, lead, and BaP at the 35<sup>th</sup> Avenue Site may present a significant threat to public health. The threat comes primarily from potential human exposure to these hazardous substances. Inhalation and ingestion of these hazardous substances are the primary pathways of exposure.

15. Exposure to elevated levels of arsenic may cause nausea and vomiting, decreased production of red and white blood cells, abnormal heart rhythm, damage to blood vessels, and a sensation of pins and needles in hands and feet. Ingesting very high levels of arsenic can result in death.

16. Exposure to elevated levels of lead can affect most major organs and systems in the body, particularly the nervous system. It may also cause weakness in fingers, wrists, or ankles. Lead exposure also causes increased blood pressure and can cause anemia. Exposure to high lead levels can severely damage the brain and kidneys in adults or children and ultimately cause death. In pregnant women, high levels of exposure to lead may cause miscarriage.

17. Exposure to elevated levels of polycyclic aromatic hydrocarbons, including BaP, may result in increased incidence of cancer.

18. To date, EPA has conducted a removal action on approximately 501 residential properties at the 35<sup>th</sup> Avenue Site, and work is ongoing. EPA is prioritizing the time-critical removal action cleanups through a phased approach. Phase I included the 50 most heavily contaminated properties. Phase II included approximately 30 contaminated properties with sensitive populations, including children and pregnant women. Phase III included approximately

35 contaminated properties where potential cancer-causing contaminants were two times over the RMLs. Phase IV includes the remaining properties and is ongoing.

19. On September 22, 2014, EPA proposed the 35<sup>th</sup> Avenue Site to the National Priorities List. To date, a final decision on listing the 35<sup>th</sup> Avenue Site on the NPL has not been made by EPA.

20. Under warrants issued by this Court, EPA has conducted sampling at more than 400 vacant or abandoned properties where it was unable to obtain voluntary access from landowners or tenants. Among the properties sampled under the access warrants are 46 properties (the “46 Residential Properties” identified in Exhibit A to the Application) where EPA’s sampling shows significant contamination with arsenic, lead, and/or benzo(a)pyrene. As part of its ongoing time-critical removal action at the 35<sup>th</sup> Avenue Site, EPA has determined that the 46 Residential Properties should be cleaned up. Access to clean up the 46 Residential Properties is important since the levels of contamination on these properties are consistent with the elevated concentrations present on many of the other properties cleaned up by EPA to date.

21. As of the date of this Declaration, EPA has been unable to obtain access through consent to conduct removal and cleanup activities at the 46 Residential Properties. EPA has used its best efforts to secure access to these properties in order to conduct the cleanup work. The efforts used by EPA to secure access at the 35<sup>th</sup> Avenue Site are set forth in the Declaration of Kyle Bryant, Community Involvement Coordinator, which is attached to the United States’ Application for Warrant. As the OSC at the 35<sup>th</sup> Avenue Site, I, too, have been involved in access efforts, which are explained in greater detail below.

22. Our field office, located near the 35<sup>th</sup> Avenue Site at 3400 33<sup>rd</sup> Terrace North in Birmingham, Alabama, has been open since February 2014. The office is open to the public

Monday - Friday 7:00 am to 6:00 pm. EPA's work force, known in the community as "the red truck guys," work in the community 10 hours a day, five days a week. They are routinely approached by members of the community. They answer operational questions and connect the public with EPA staff.

23. EPA also created a 35<sup>th</sup> Avenue Community Involvement hotline, available 24 hours daily as a resource to the community to address any questions regarding EPA's actions, including access efforts. The local number is 205-326-8640, and the toll-free number is 877-718-3752.

24. Since February 2013, EPA has maintained two document repositories at the 35<sup>th</sup> Avenue Site to keep the public apprised of its actions. The repositories are located at:

Harriman Park Recreational Center  
4347 FL Shuttlesworth Drive  
Birmingham, Alabama 35207

North Birmingham Public Library  
2501 31<sup>st</sup> Avenue N  
Birmingham, Alabama 35207

A third document repository has been maintained at the local EPA field office since it opened in February 2014.

25. Through all of these public outreach efforts, EPA has a well-established presence in the community in and surrounding the 35<sup>th</sup> Avenue Site, and any property owners wishing to contact EPA regarding cleanup efforts would have little difficulty doing so.

26. EPA's use of its best efforts to obtain consent from any identified owners or tenants at the 46 Residential Properties has included multiple letters and visits to the properties, as described in the Declaration of Kyle Bryant. The most recent property visit survey to identify the current status of these properties and to obtain any additional access authorizations from

previously unavailable owners or tenants involved five visits in December 2017, August 2019, April 2020, September 2020, and March 2021. Through those visits EPA determined that all of the 46 Residential Properties remain vacant, abandoned or unoccupied.

27. The 46 Residential Properties contain houses in terrible condition with no connected utilities or are vacant lots that had structures demolished by the City of Birmingham in the recent past. In many cases, EPA has spoken with neighboring property owners and they have confirmed that no owner or tenant has been at these properties in several years. Many of these 46 Residential Properties also have years of unpaid real estate taxes and the City has expressed no concern with EPA cleaning up these properties.

28. To conduct the needed work pursuant to the time-critical removal action, EPA must be permitted to enter the 46 Residential Properties and complete its cleanup activities. The necessary removal response activities are as follows:

- excavating contaminated soil and properly disposing of it offsite;
- backfilling the excavated areas with clean fill material;
- performing confirmation soil sampling;
- transporting equipment onto and about each Residential Property as necessary to accomplish the above activities; and
- taking photographs of the property and surrounding areas to appropriately document the cleanup activities.

29. The cleanup activities should take no more than five days at each Residential Property. EPA personnel or representatives will conduct removal response work on multiple properties concurrently.

30. I anticipate completing entry and the work within the 180-day access period

requested in the United States' Application. If EPA needs to conduct response work on additional properties at the Site, it will return to the Court with a new application seeking a separate administrative warrant authorizing such access.

31. As described in Paragraph 20, this Court previously issued access warrants for sampling at all 46 of these residential properties. In the applications for those previous sampling warrants, EPA also demonstrated that it had been unable to locate or communicate with the owners of these 46 vacant lots or abandoned/unoccupied properties to obtain consent for EPA to access the properties to carry out necessary response actions.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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Subash Patel  
On-Scene Coordinator

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

IN THE MATTER OF:

Civil Action No.:

UNITED STATES' APPLICATION FOR  
EX PARTE ADMINISTRATIVE  
WARRANT FOR ENTRY AND ACCESS  
TO 46 RESIDENTIAL PROPERTIES AT  
THE 35<sup>TH</sup> AVENUE SUPERFUND SITE

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**DECLARATION OF KYLE BRYANT**

I, Kyle Bryant, declare as follows:

1. I am a Community Involvement Coordinator with the Superfund Division of the United States Environmental Protection Agency ("EPA"), Region 4, in Atlanta, Georgia.
2. As a Community Involvement Coordinator, my duties include community outreach and education and directing, managing, planning, coordinating, and reviewing access at sites contaminated or possibly contaminated with hazardous substances governed by the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").
3. Since 2011, EPA has undertaken sampling and cleanup efforts in and around the 35th Avenue Superfund Site in Birmingham, Alabama ("35th Avenue Site"), which includes over 2,000 residential properties.
4. Over the course of these last eight years, EPA has had three Community Involvement Coordinators assigned to the 35th Avenue Site. In this capacity, I have been personally made aware of, overseen, and/or have personally been involved in a variety of community outreach efforts. General community outreach efforts have included:

- EPA's opened a local outreach office and staffed it from October 2012 – February 29, 2016. Approximately 50 visitors per week stopped by the outreach office since opening. It was located near the 35th Avenue Site at: 1820 7<sup>th</sup> Avenue North, Suite 100, Birmingham, AL 35203.
- In October 2012, EPA mailed and distributed fact sheets to residents in the 2,000-property sampling area describing EPA's sampling and cleanup efforts and need for access.
- Beginning on October 7, 2012, the Birmingham Times published display advertisements requesting signature of EPA's access agreements. Display advertisements ran in the local newspaper every Thursday until December 27, 2012.
- EPA mailed (via Certified Mail through the U.S. Postal Service) access authorizations providing details regarding the sampling investigation between October 12, 2012 and February 22, 2013 to numerous Residential Properties identified in Exhibit A to the Application.
- EPA hosted public meetings to discuss its response action, the need for access agreements, and subsequent updates on October 1, 2, 4, and 8, 2012; November 5, 29, and 30, 2012; December 2, 4, 14, 27, and 28, 2012; and August 20, 2013.
- EPA staff has attended monthly local Neighborhood Association meetings, in all three communities encompassing the 35th Avenue Site (Collegeville, Fairmont, and Harriman Park) since October 2012.
- EPA distributed flyers to all churches within the sampling and cleanup areas beginning on November 4, 2012.



- EPA conducted Robo-Calls announcing the access period and providing contact information to residents and property owners in the Collegeville, Fairmont, and Harriman Park communities every Saturday. Robo-Calls began on November 17, 2012, and continued until December 29, 2012.
- On February 27, 2013, over 200 college students, volunteers, and City employees, assisted by EPA staff, conducted a door-to-door outreach effort in order to obtain signed sampling access agreements.
- EPA, since February 2013, maintains information repositories available to the public documenting and supporting EPA's actions at the 35th Avenue Site. The information repositories are located in each community at:

EPA Site Office  
3400 33rd Terrace N  
Birmingham, Alabama 35207

Harriman Park Recreational Center  
4347 FL Shuttlesworth Drive  
Birmingham, Alabama 35207

North Birmingham Public Library  
2501 31st Avenue N  
Birmingham, Alabama 35207

- EPA mailed (via Certified Mail through the U.S. Postal Service) a second letter on March 6 and 22, 2013 to owners with properties in a newly expanded sampling area of the 35<sup>th</sup> Avenue Site.
- On July 29, 2013, EPA mailed (via Certified Mail through the U.S. Postal Service) follow-up access authorization forms to approximately 850 unresponsive property owners.

- EPA set up a booth at the local health and job fair to reach out to residents and obtain signed access authorization forms on July 25, 2013.
- On August 20, 2013, EPA joined the Agency for Toxic Substances Disease Registry in a public meeting/availability session to reinforce EPA's request for signed access agreements.
- EPA attended Network Night meetings the weeks of September 14 and November 2, 2013. These meetings are a recurring gathering of community stakeholders, representing high school students, local colleges and universities, the business community, and a host of non-profits. EPA informed residents about the Agency's ongoing efforts, including access.
- EPA participated in the North Birmingham Community Coalition meeting held on October 29-14, 2013 for the 35th Avenue Site.

5. In addition to general community outreach efforts, I have been personally made aware of, overseen, and/or personally been involved in more targeted access efforts where individuals have been non-responsive or have denied EPA access to their properties to complete the sampling investigation and cleanup efforts. The following targeted efforts have been undertaken involving all of the 46 Residential Properties identified in Exhibit A to the Application, but in each case the owners and/or tenants of record failed to respond to EPA's repeated requests to obtain access authorizations:

- EPA has attempted to make phone contact with owners/tenants.
- EPA sent mailings containing access authorizations to all 46 parties on three occasions, the last one being on July 13, 2015.

- EPA sampled all 46 Residential Properties under this Court's September 3, 2016, February 20, 2018, or March 13, 2020, prior access warrants for sampling.
- In December 2017, EPA conducted property-specific visits of the 46 Residential Properties needing to be cleaned up. During these visits, EPA confirmed the 46 Residential Properties were vacant, unoccupied or abandoned properties.
- Most recently, in August 2019, April 2020, September 2020, and March 2021, through door-to-door visits, EPA confirmed that the occupancy status of the 46 Residential Properties needing cleanup had not changed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Kyle Bryant

\_\_\_\_\_  
Community Involvement Coordinator

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

IN THE MATTER OF:

Civil Action No:

UNITED STATES' APPLICATION FOR  
EX PARTE ADMINISTRATIVE  
WARRANT FOR ENTRY AND ACCESS  
TO 46 RESIDENTIAL PROPERTIES AT  
THE 35<sup>TH</sup> AVENUE SUPERFUND SITE

**MEMORANDUM OF LAW IN  
SUPPORT OF THE UNITED STATES'  
APPLICATION FOR EX PARTE  
ADMINISTRATIVE WARRANT FOR  
ENTRY AND ACCESS TO 46  
RESIDENTIAL PROPERTIES AT THE  
35<sup>TH</sup> AVENUE SUPERFUND SITE**

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**PRELIMINARY STATEMENT**

The United States of America submits this Memorandum of Law ("Memorandum") in support of its Application ("Application") for an Ex Parte Administrative Warrant ("Warrant") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601 et seq., for entry and access for any officer, employee, authorized contractor, or representative of the United States Environmental Protection Agency ("EPA"), any United States Marshal for the Northern District of Alabama, as well as any other authorized Federal officer, onto and remaining on the 46 premises (all of which are vacant lots or abandoned/unoccupied residences) listed in Exhibit A to the Application (the "46 Residential Properties") to clean up the release of hazardous substances, including arsenic, lead, and polycyclic aromatic hydrocarbons. In each case and as discussed in more detail below, EPA was either unable to identify the property owner, or where the owner was ascertainable, was unable to obtain a response and/or signed access authorization from the owner; therefore, EPA is seeking a Warrant for access from the Court. See Declaration of Subash Patel at ¶¶ 21, 26-27, and 31,

attached to the Application as Exhibit B (hereinafter “Patel Decl.”). See also Declaration of Kyle Bryant at ¶¶ 4-5, attached to the Application as Exhibit C (hereinafter “Bryant Decl.”).

EPA has determined that a release of a hazardous substance into the environment, as defined by Sections 101(14) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(14) and (22), has occurred at the 35<sup>th</sup> Avenue Superfund Site in Birmingham, Alabama (“35<sup>th</sup> Avenue Site”). See Patel Decl. at ¶ 13. More specifically, lead, arsenic, and benzo(a)pyrene, a polycyclic aromatic hydrocarbon, have been found in soils at the 35<sup>th</sup> Avenue Site and are CERCLA hazardous substances, as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and as listed in 40 C.F.R. § 302.4. Id. at ¶¶ 12-13. Human exposure to arsenic, lead, and benzo(a)pyrene through direct contact with or ingestion of contaminated soil at the 35<sup>th</sup> Avenue Site may present a significant threat to public health. Id. at ¶ 14. Exposure to elevated levels of these hazardous substances at the 35<sup>th</sup> Avenue Site may cause potential chronic health effects and increased incidence of cancer. Id. at ¶¶ 14-17.

The 46 Residential Properties are all located within the 35<sup>th</sup> Avenue Site, and EPA and its authorized representatives need access to these properties to clean up and remove these hazardous substances.

### **FACTUAL BACKGROUND**

#### **A. The 35<sup>th</sup> Avenue Superfund Site in Birmingham, Alabama**

The 35<sup>th</sup> Avenue Site is located in Birmingham, Jefferson County, Alabama. Industrial development and operations have been ongoing in the vicinity of the 35<sup>th</sup> Avenue Site since the late 1800s. These industries include, but are not limited to, foundries and kilns, scrap metal processing facilities, auto/truck salvage yards, transloading terminals, rail-yards, stone/cement/asphalt aggregate facilities, chemical plants, and facilities that manufacture

foundry and furnace coke as well as coke by-products. These industries are associated with the creation or release of various hazardous substances including arsenic, lead, and benzo(a)pyrene. Patel Decl. at ¶ 5. In addition to its attempts to identify and remediate contamination at the 35<sup>th</sup> Avenue Site as described in the Application and this Memorandum, EPA has also investigated the past and current operations of companies located in the vicinity of the 35<sup>th</sup> Avenue Site to identify Potentially Responsible Parties (“PRPs”) who may be responsible for the contamination at the 35<sup>th</sup> Avenue Site. Id. at ¶ 6.

### **B. Initial Investigation and Response to Site Contamination**

In 2009, EPA, through its Resource Conservation and Restoration Division, approved soil sampling by Walter Coke, Inc., a coke manufacturer and PRP at the 35<sup>th</sup> Avenue Site, at a relatively small number of properties located adjacent to Walter Coke’s facility in Birmingham, Alabama. The results showed that some of the sampled properties had elevated levels of arsenic and benzo(a)pyrene. This sampling resulted in a soil cleanup by Walter Coke at 16 residential properties and two public schools within the 35<sup>th</sup> Avenue Site. Id. at ¶ 8.

In 2011, based in part on these initial sampling results, EPA, through its Superfund Division, identified approximately 2,000 additional properties that required further investigation, predominantly residential lots that warranted concern due to their proximity to industrial operations. These 2,000 properties became the 35<sup>th</sup> Avenue Site. EPA obtained landowner permission to conduct sampling on approximately 1,283 of these properties, and results revealed that soil at approximately 394 of the sampled properties contained arsenic, lead, and benzo(a)pyrene at levels exceeding EPA Region 4’s Removal Management Levels (“RMLs,” which are chemical-specific concentrations for individual contaminants that are used to guide EPA’s decision to undertake a removal action). Id. at ¶ 12. As a result of RML exceedances, the

35<sup>th</sup> Avenue Site qualified for a time-critical removal action to address an immediate threat to public health or welfare or the environment. Id. at ¶ 13. To date, EPA has financed and remediated soil contamination at approximately 501 residential properties at the 35<sup>th</sup> Avenue Site, and work is ongoing. Id. at ¶¶ 13, 18.

On September 22, 2014, the 35<sup>th</sup> Avenue Site was proposed to the National Priorities List (“NPL”). Id. at ¶ 19. The NPL serves primarily as an informational tool for use by EPA in identifying, quickly and inexpensively, those sites that appear to present a significant risk to public health or the environment. See CTS Corp. v. EPA, 759 F.3d 52, 56 (D.C. Cir. 2014); Carus Chem. Co. v. EPA, 395 F.3d 434, 441 (D.C. Cir. 2005); Wash. State Dep’t of Transp. v. EPA, 917 F.2d 1309, 1310 (D.C. Cir. 1990). To date, a final determination to list the 35<sup>th</sup> Avenue Site on the NPL has not yet been made by EPA. Patel Decl. at ¶ 19.

**C. The 46 Residential Properties are Contaminated with Hazardous Substances and are Subject to the 35<sup>th</sup> Avenue Time-Critical Removal Action**

Each of the 46 Residential Properties was sampled by EPA under prior access warrants issued by this Court on September 3, 2016, February 20, 2018 and March 13, 2020, and was found to contain actionable levels of the hazardous substances arsenic, lead, and/or benzo(a)pyrene. Patel Decl. at ¶ 20. In determining the order in which to clean up the hundreds of contaminated properties within the 35<sup>th</sup> Avenue Site, EPA consulted with community leaders in the North Birmingham Community Coalition to identify properties that are most susceptible to human exposure as a result of location. See Bryant Decl. at ¶ 5. Levels of contamination at the 46 Residential Properties are consistent with the elevated levels of contamination at other properties EPA has already cleaned up within the 35<sup>th</sup> Avenue Site. Patel Decl. at ¶ 20. And because the 46 Residential Properties are vacant lots or abandoned/unoccupied residences, they

present opportunities for children to play and potentially be exposed to contaminated soil. See Patel Decl. at ¶¶ 26-27. Accordingly, EPA has determined that cleanup of the 46 Residential Properties is necessary to remove soil that is contaminated with arsenic, lead, and/or benzo(a)pyrene. Patel Decl. at ¶ 20.

**D. EPA's Attempts to Obtain Residential Property Owners' Consent to Conduct Cleanup**

As described in detail in the Declaration of Kyle Bryant, EPA tried to locate owners and tenants of the 46 Residential Properties by mailing letters to the owners that are listed in the county tax database by both regular and certified mail; searching local and on-line telephone directories for contact information; visiting the properties multiple times; interviewing neighbors; and posting letters and/or business cards at the properties. Bryant Decl. at ¶¶ 4-5. In addition to these individual, targeted efforts, EPA reached out to the community through a series of public meetings, outreach to community groups and churches, and publishing print ads in the local newspaper. Id. All of the 46 Residential Properties included in this Application are either vacant lots with no house or structure or abandoned/unoccupied residential structures located on the parcel. Patel Decl. at ¶¶ 26-27. And in each case the owner and/or tenant of record failed to respond to EPA's repeated requests to obtain access authorizations. Bryant Decl. at ¶ 5. EPA made multiple recent visits and door-to-door access efforts conducted in December 2017, August 2019, April 2020, and September 2020 at each of the 46 Residential Properties, but was once again unsuccessful at establishing contact with anyone that could grant voluntary access to the properties. Patel Decl. at ¶ 26.

**E. EPA's Plan for Cleaning Up the 46 Residential Properties**

EPA's ongoing efforts to conduct cleanup activities on residential properties at the 35<sup>th</sup> Avenue Site are a "removal response action" whereby EPA will conduct "the cleanup or removal



of hazardous substances” from the environment as described in Sections 101(23) and (25) of CERCLA, 42 U.S.C. §§ 9601(23) and (25). Patel Decl. at ¶¶ 13, 18. To move forward with this removal action, EPA and its representatives must be permitted to enter the 46 Residential Properties. Id. at ¶ 20. The activities for which entry is required are as follows:

- excavating contaminated soil and properly disposing of it offsite;
- backfilling the excavated areas with clean fill material;
- performing confirmation soil sampling;
- transporting equipment onto and about each Residential Property as necessary to accomplish the above activities; and
- taking photographs of the property and surrounding areas to appropriately document the cleanup activities.

Id. at ¶ 28. Completion of cleanup work should take no longer than five days per Residential Property, and EPA intends to carry out concurrent cleanup activities at several of the 46 Residential Properties to expedite the process. Id. at ¶ 29. Should all the cleanup activities authorized in the Warrant not be completed within 180 days of its issuance, the United States will, if necessary, return to the Court to seek an extension of the Warrant as to those of the 46 Residential Properties for which cleanup was not completed. Id. at ¶ 30.

### **STATUTORY BACKGROUND**

CERCLA, 42 U.S.C. §§ 9601-9675, and the governing case law interpreting it, authorize this Court to issue the requested Warrant to allow EPA to engage in response actions at the 35<sup>th</sup> Avenue Site. Congress enacted CERCLA in response to widespread concern over the serious environmental and health hazards posed by industrial pollution. See United States v. Bestfoods, 524 U.S. 51, 55 (1998). CERCLA’s purpose “is to facilitate the prompt clean-up of hazardous

waste sites.” In re Bell Petroleum Servs., Inc., 3 F.3d 889, 894 (5th Cir. 1993); see also Burlington Northern & Santa Fe Ry. Co. v. United States, 556 U.S. 599, 602 (2009); Bernstein v. Bankert, 702 F.3d 964, 973 (7th Cir. 2012). To further that purpose, Congress provided EPA with “the authority and the funds necessary to respond expeditiously to serious hazards without being stopped in its tracks by legal entanglement before or during the hazard clean-up.” Boarhead Corp. v. Erickson, 923 F.2d 1011, 1019 (3rd Cir. 1991); see also J.V. Peters & Co. v. Administrator, EPA, 767 F.2d 263 (6th Cir. 1985). Under Section 104(a) of CERCLA, whenever there is a release or substantial threat of release of a hazardous substance, EPA is authorized to remove the hazardous substance, provide for remedial action, and take other response measures consistent with the national contingency plan. 42 U.S.C. § 9604(a). One of EPA’s tools for achieving prompt and effective response actions is the access authority provided by Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), provides EPA<sup>1</sup> with broad access authority in order to effectuate the purposes of CERCLA. See Key Tronic Corp. v. United States, 511 U.S. 809, 814 (1994) (“As its name implies, CERCLA is a comprehensive statute that grants the President broad power to command government agencies and private parties to clean up hazardous waste sites”); New Jersey Dep’t of Env’t Prot. v. Briar Lake Dev., 736 F. Supp. 62, 66 (D.N.J. 1990) (recognizing that access for remediation is one of “the tools necessary for a prompt and effective response to the problems of national magnitude resulting from hazardous

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<sup>1</sup> Section 104 of CERCLA authorizes the President to take the various actions discussed here. The President has delegated that authority to EPA. Exec. Order No. 12580, sec. 2(g) and (i), 52 Fed. Reg. 2923, 2925 (Jan. 23, 1987) (delegating to EPA investigatory, response, and entry authority under Section 104 of CERCLA with regard to non-federal facilities). This authority was redelegated to the EPA Region 4 Regional Administrator through Delegation 14-6, Inspections, Sampling, Information Gathering, Subpoenas, and Entry for Response.

waste disposal”). Specifically, CERCLA provides that if there is reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant, any officer, employee, or representative of EPA is authorized to enter at reasonable times any “property where entry is needed to ... effectuate a response action under this subchapter.” 42 U.S.C. §§ 9604(e)(1) and (3).

If consent is not granted regarding any request for access under Section 104(e) of CERCLA, EPA may issue an order directing compliance with the request and/or ask the Attorney General to commence a civil action to compel compliance with the request. 42 U.S.C. § 9604(e)(5). Section 104(e) of CERCLA further states that EPA may “secur[e] access or obtain[] information in any other lawful manner.” 42 U.S.C. § 9604(e)(6). A court may thus issue an ex parte administrative warrant for access and entry when EPA is unable to obtain consent to access property from an owner. In re Yoder’s Slaughterhouse Site, 519 F. Supp. 2d 574, 579 (D. Md. 2007); Bunker Hill Co. Lead & Zinc Smelter v. EPA, 658 F.2d 1280, 1285 (9th Cir. 1981).

### **ARGUMENT**

The United States applies to this Court to enforce its right to enter the 46 Residential Properties to respond to the release or threat of release of hazardous substances. Based on prior sampling work, EPA has actual knowledge that hazardous substances, including arsenic, lead, and polycyclic aromatic hydrocarbons, were released at the 35<sup>th</sup> Avenue Site, and are present at levels of concern in soils at the 46 Residential Properties. And EPA has determined that a time critical removal action is warranted to address that contamination. Patel Decl. at ¶ 13. EPA is therefore authorized under Section 104(e) of CERCLA to enter the 46 Residential Properties to effectuate a response action to clean up the documented contaminated soil.

As discussed above, EPA made extensive efforts to locate owners and tenants of the 46 Residential Properties, but in each case was either unable to locate an owner from whom to seek access, or where the owner was ascertainable, was unable to obtain a response and/or signed access authorization. The Court should grant EPA an ex parte warrant to ensure that EPA can carry out necessary removal work at the 46 Residential Properties and move forward with its efforts to fully remediate contamination at the 35<sup>th</sup> Avenue Site.

**A. EPA Is Authorized under Section 104(e) of CERCLA to Access the 46 Residential Properties to Respond to and Clean Up the Identified Hazardous Substances**

Section 104(e) of CERCLA authorizes EPA to enter a property where there is reasonable basis to believe that a release or threatened release of a hazardous substance has occurred, and where entry to the property is necessary to effectuate a response to that release or threatened release. 42 U.S.C. §§ 9604(e)(1) and (3).

There is abundant evidence that releases or threatened releases of hazardous substances have occurred at the 35<sup>th</sup> Avenue Site. Initial sampling by Walter Coke and overseen by EPA's Resource Conservation and Restoration Division in the North Birmingham area indicated the presence of arsenic and/or benzo(a)pyrene at residences and schools within the 35<sup>th</sup> Avenue Site in elevated concentrations, resulting in soil removal at 16 properties within the 35<sup>th</sup> Avenue Site in 2009. Patel Decl. at ¶ 8. Broader sampling efforts at 1,283 additional properties within the 35<sup>th</sup> Avenue Site identified 394 more properties with contamination exceeding RMLs. *Id.* at ¶¶ 11-12. And EPA has determined that the 35<sup>th</sup> Avenue Site qualifies for a time-critical removal action to address this contamination. *Id.* at ¶ 13. Based on sampling results obtained under prior access warrants issued by this Court, EPA has determined that the 46 Residential Properties are

themselves significantly contaminated, and must be included among the hundreds of other properties addressed by the 35<sup>th</sup> Avenue Site time-critical removal action. Id. at ¶ 20.

Accordingly, EPA is authorized under Section 104(e) of CERCLA to enter the 46 Residential Properties to “effectuate a response action,” and seeks a warrant from the Court ordering that such access be granted. 42 U.S.C. §§ 9604(e)(3)(D).

**B. The Court Should Issue the Requested Ex Parte Warrant for Access**

1. Issuance of a Warrant is Authorized by Law

EPA’s access authority under CERCLA is broad, and not limited to the statutory procedures and methods explicitly set forth in subsections (1) through (5) of Section 104(e).<sup>2</sup> Rather, Section 104(e)(6) provides that “[n]othing in this subsection shall preclude [EPA] from securing access ... in any other lawful manner.” 42 U.S.C. § 9604(e)(6). The Supreme Court has recognized that “[w]hen Congress invests an agency with enforcement and investigatory authority, it is not necessary to identify explicitly each and every technique that may be used in the course of executing that authority.” Dow Chemical Co. v. United States, 476 U.S. 227, 233 (1986). And Federal courts routinely enforce EPA’s right of access under environmental statutes – including CERCLA – even where those statutes do not expressly provide for warrant authority. See e.g., Koppers Indus., Inc. v. EPA, 902 F.2d 756 (9th Cir. 1990) (affirming district court’s denial of motion to quash warrant issued under CERCLA Section 104(e)); Nat’l-Standard Co. v. Adamkus, 881 F.2d 352 (7th Cir. 1989) (upholding issuance of warrant to EPA under analogous statute, the Resource Conservation and Recovery Act (“RCRA”)); Mobil Oil Corp. v. EPA, 716

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<sup>2</sup> Section 104(e)(5)(A) of CERCLA provides EPA with the authority to “issue an order directing compliance with” a request made by EPA pursuant to Sections 104(e)(2), (3) or (4). Section 104(e)(5)(B) of CERCLA permits EPA to ask the Attorney General to “commence a civil action to compel compliance” with EPA’s request or order for access.

F.2d 1187 (7th Cir. 1983) (upholding issuance of warrant to EPA under the Clean Water Act); Pub. Serv. Co. of Ind. v. EPA, 682 F.2d 626 (7th Cir. 1982), cert. denied, 459 U.S. 1127 (1983) (upholding issuance of warrant to EPA under the Clean Air Act).

Further, the probable cause standard for issuance of civil administrative warrants is less stringent than the criminal probable cause standard. As the United States Supreme Court said in Marshall v. Barlow's, Inc.:

Whether the Secretary proceeds to secure a warrant or other process, with or without prior notice, his entitlement to inspect will not depend on his demonstrating probable cause to believe that conditions in violation of OSHA exist on the premises. *Probable cause in the criminal sense is not required. For purposes of an administrative search such as this, probable cause justifying the issuance of a warrant may be based not only on specific evidence of an existing violation but also on a showing that "reasonable legislative or administrative standards for conducting an . . . inspection are satisfied with respect to a particular [establishment]."*

436 U.S. 307, 320-21 (1978) (emphasis added) (quoting Camara v. Municipal Court, 387 U.S. 523, 538 (1967)). Determining "cause" to support the issuance of an administrative warrant does not require a showing of probability of a violation, but only of specific evidence that is sufficient to support a "reasonable suspicion" of the circumstances designated by statute. See West Point-Pepperell, Inc. v. Donovan, 689 F.2d 950, 958 (11th Cir. 1982). In the context of a request for access to conduct cleanup activities under CERCLA, this means that EPA must have a reasonable basis to believe that there has been a release or threatened release of a hazardous substance, and that there is need to effectuate a response action. 42 U.S.C. §§ 9604(e)(1) and (e)(3)(D).

## 2. EPA has Satisfied the Warrant Requirements Under CERCLA

The standard for EPA to obtain an administrative warrant under CERCLA Section 104(e) is not difficult to meet. United States v. Tarkowski, 248 F.3d 596, 599 (7th Cir. 2001) (“[t]he requirement of a reasonable basis is easily satisfied”); United States v. Fisher, 864 F.2d 434, 438 (7th Cir. 1988) (the standard is “undemanding”). EPA need only show that its “demand for access [is] grounded in ‘a reasonable basis to believe there may be a release or threat of release of a hazardous substance’ and is not ‘arbitrary and capricious, an abuse of discretion,’ or otherwise illegal.” Fisher, 864 F.2d at 438. Furthermore, EPA need not prove that any minimum amount of hazardous substances have been, or are threatened to be, released. United States v. Mountaineering Ref. Co., 886 F. Supp. 824, 828 (D. Wyo. 1995); Tarkowski, 248 F.3d at 599 (“there is nothing in section 104(e)(1) about magnitude”).

Ultimately, reasonableness governs issuance of administrative warrants. “If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant.” Camara, 387 U.S. at 539 (citing Oklahoma Press Pub. Co. v. Walling, 327 U.S. 186 (1946)). In this case, access is justified by a valid public interest in eliminating the threat to the public health and the environment posed by soil contamination at the 35th Avenue Site. EPA has actual knowledge of releases of hazardous substances at the 35<sup>th</sup> Avenue Site in the form of lead, arsenic and benzo(a)pyrene found at actionable levels in the soil in numerous residential yards, including the 46 Residential Properties that are the subject of this warrant application. And EPA seeks entry to the 46 Residential Properties for the purpose of removing contaminated soil and conducting other appropriate remedies at these properties. Accordingly, EPA has satisfied the statutory requirements for access under Section 104(e) of CERCLA 42 U.S.C. §§ 9604(e)(1) and (e)(3)(D).

### 3. The Court Should Issue The Warrant Ex Parte

This Court has the authority to issue the Warrant ex parte under CERCLA Section 104(e) where, as here, the “owner will not consent to the EPA’s proposed activities,” and the EPA has a reasonable basis to believe there may be a release or threat of release of a hazardous substance. In re Yoder’s Slaughterhouse, 519 F. Supp. 2d at 579. Here, EPA has produced sufficient evidence to justify issuance of the administrative warrant ex parte pursuant to CERCLA. EPA has undertaken extensive efforts to locate and communicate with owners or tenants of each of the 46 Residential Properties, but has in each case been unable to get in contact with and obtain a response and/or signed access authorization from an owner or tenant to enter these properties and conduct the needed cleanup work. Bryant Decl. at ¶ 5; Patel Decl. at ¶¶ 21, 26-27. Therefore, the Court should issue the Warrant ex parte for a period of 180 days for EPA to conduct the necessary removal activities at the 46 Residential Properties. When EPA executes the Warrant at each Residential Property, a copy of the Warrant will be provided to the occupant, or if no occupant is present, will be left at the Residential Property.

### **CONCLUSION**

For the reasons stated, the Court should grant the Application of the United States and issue the requested Warrant.

Dated: \_\_\_\_ day of \_\_\_\_\_, 2021.

Respectfully Submitted,

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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

IN THE MATTER OF:	)	
	)	
	)	Civil Action No:
UNITED STATES' APPLICATION FOR	)	
EX PARTE ADMINISTRATIVE	)	
WARRANT FOR ENTRY AND ACCESS	)	
TO 46 RESIDENTIAL PROPERTIES AT	)	
THE 35 <sup>TH</sup> AVENUE SUPERFUND SITE	)	
	)	

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**[PROPOSED] EX PARTE ADMINISTRATIVE WARRANT FOR ENTRY AND ACCESS  
TO 46 RESIDENTIAL PROPERTIES AT THE 35<sup>TH</sup> AVENUE SUPERFUND SITE**

**To: Any officer, employee, authorized contractor, or representative of the United States Environmental Protection Agency ("EPA"), duly designated by EPA, any United States Marshal for the Northern District of Alabama, and any other authorized Federal officer:**

Upon Ex Parte Application for an Administrative Warrant, submitted by the United States on behalf of the United States Environmental Protection Agency ("EPA"), demonstrating sufficient justification for entry onto and remaining on each of the properties identified on Exhibit A to this Warrant (the "46 Residential Properties") pursuant to Sections 104(e)(3), (4), and (6) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9604(e)(3), (4), and (6), for the purposes of conducting removal response work and cleanup activities as deemed necessary by EPA pursuant to CERCLA, this Court finds that the United States' Application and attached declarations establish reasonable grounds for issuance of the requested Warrant.

ACCORDINGLY, YOU ARE HEREBY AUTHORIZED TO: Enter on or into, move about, remain on or about, and as necessary re-enter, the 46 Residential Properties at all reasonable times for the purposes of conducting cleanup work and other removal activities

pursuant to Sections 104(e)(3), (4), and (6) of CERCLA, 42 U.S.C. §§ 9604(e)(3), (4), and (6), as follows:

- excavating contaminated soil and properly disposing of it offsite;
- backfilling the excavated areas with clean fill material;
- performing confirmation soil sampling;
- transporting equipment onto and about each property as necessary to accomplish the above activities; and
- taking photographs of the property and surrounding areas to appropriately document the cleanup activities.

IT IS FURTHER ORDERED that the duration of the entry, investigation, and activity authorized by this Warrant shall be 180 days from the date of issuance, which EPA believes will provide sufficient time to satisfactorily complete the above described activities at each of the 46 Residential Properties. If the United States is unable to complete the above described activities within 180 days of issuance of this Warrant, the United States may return to this Court to seek an appropriate extension of the Warrant.

IT IS FURTHER ORDERED that all owners, occupants, operators, and persons in control of any of the 46 Residential Properties shall permit the persons specified above to enter the 46 Residential Properties during all reasonable times for the purposes specified above.

IT IS FURTHER ORDERED that, upon execution of this Warrant at each Residential Property, a copy of this Warrant shall be delivered to the occupant of that property. If no occupant is present, a copy of this Warrant shall be left at the Residential Property upon execution of this Warrant.

IT IS FURTHER ORDERED that the United States Marshal is hereby authorized and directed to assist officers, employees, and representatives of EPA in such manner as may be reasonable and necessary to execute this Warrant and all provisions contained herein.

IT IS FURTHER ORDERED that a prompt return of this Warrant shall be made upon the completion of all entry and sampling activities at the 46 Residential Properties.

As to the foregoing it is SO ORDERED this the \_\_\_\_ day of \_\_\_\_\_, 2021.

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United States District Judge

Property ID	Property Type	Property Parcel ID	Property Address	Property Address 2	Mailing 1	Door to Door Effort 1 by Accura	Mailing 2	Mailing 3	Status Site Visit 9/16/2015	Status Site Visit 2/11/2016	Status Site Visit 11/28/2017	Status Site Visit 6/19/2018	Status Site Visit 2/20/2020	Status Site Visit 3/11/2021 & 4/29/2021
CV-0054	Residential - Vacant Lot	012200134021023000	3118	31st Ave N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0216	Residential - Vacant House	012200134012002000	3221	32nd Pl N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0301	Residential - Vacant Lot	012200134015007000	3423	33rd Ave N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0304	Residential - Vacant Lot	012200134015006000	3429	33rd Ave N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0314	Residential - Vacant Lot	012200133001033000	3009	33rd Ct N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0325	Residential - Vacant House	012200133001019000	3032	33rd Ct N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0328	Residential - Vacant Lot	012200133001026000	3039	33rd Ct N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0342	Residential - Vacant Lot	012200134002005000	3431	33rd Ct N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0345	Residential - Vacant Lot	012200134002004000	3435	33rd Ct N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0397	Residential - Vacant Lot	012200131010081001	3361	33rd Pl N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0425	Residential - Vacant House	012200131010032000	3412	33rd Pl N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11

Property ID	Property Type	Property Parcel ID	Property Address	Property Address 2	Mailing 1	Door to Door Effort 1 by Accura	Mailing 2	Mailing 3	Status Site Visit 9/16/2015	Status Site Visit 2/11/2016	Status Site Visit 11/28/2017	Status Site Visit 6/19/2018	Status Site Visit 2/20/2020	Status Site Visit 3/11/2021 & 4/29/2021
CV-0448	Residential - Vacant House	012200134012012000	3216	33rd St N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0515	Residential - Vacant Lot	012200134001004000	3409	33rd Ter N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0542	Residential - Vacant Lot	012200134014013000	3112	34th St N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0546	Residential - Vacant Lot	012200134014017000	3130	34th St N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0553	Residential - Vacant Lot	012200134003015000	3318	34th St N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0746	Residential - Vacant Lot	012300182002002001	3539	34th Ct N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0751	Residential - Vacant Lot	012200134017015000	3416	35th St N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0756	Residential - Vacant Lot	012200134017021000	3440	35th St N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0760	Residential - Vacant Lot	012200134023020000	3125	30th Ct N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0765	Residential - Vacant Lot	012200134022033000	3140	30th Ct N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0776	Residential - Vacant Lot	012200134022038000	3168	30th Ct N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11

Property ID	Property Type	Property Parcel ID	Property Address	Property Address 2	Mailing 1	Door to Door Effort 1 by Accura	Mailing 2	Mailing 3	Status Site Visit 9/16/2015	Status Site Visit 2/11/2016	Status Site Visit 11/28/2017	Status Site Visit 6/19/2018	Status Site Visit 2/20/2020	Status Site Visit 3/11/2021 & 4/29/2021
CV-0779	Residential - Vacant Lot	012200134023010000	3173	30th Ct N	10/15/2012	1/21/2013	3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 3/11
CV-0795	Residential - Vacant Lot	012200134022048000	3236	30th Ct N	12/6/2012		3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-0802	Residential - Vacant Lot	012200134022020000	3129	31st Ave N	12/6/2012		3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-0805	Residential - Vacant Lot	012200134022017000	3137	31st Ave N	12/6/2012		3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-0813	Residential - Vacant House	012200134022009000	3213	31st Ave N	12/6/2012		3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-0839	Residential - Vacant Lot	012200134016009000	3413	32nd Ave N	12/6/2012		3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-0845	Residential - Vacant Lot	012200134016003000	3431	32nd Ave N	12/6/2012		3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-0879	Residential - Vacant Lot	012200134020004000	3025	33rd St N	12/6/2012		3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-0915	Residential - Vacant Lot	012300182004015000	3505	34th Ave N	12/6/2012		3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-0921	Residential - Vacant Lot	012300182004011000	3515	34th Ave N	12/6/2012		3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-0948	Residential - Vacant Lot	012300182002007000	3523	34th Ct N	12/6/2012		3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-0952	Residential - Vacant Lot	012300182002002000	3539	34th Ct N	12/6/2012		3/22/2013	7/13/2015	Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-1012	Residential - Vacant Lot	012200134040009000	3426	27th Ave N	3/6/2013		7/13/2015		Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-1152	Residential - Vacant Lot	012200134037008000	3321	28th Ave N	3/6/2013		7/13/2015		Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29

Property ID	Property Type	Property Parcel ID	Property Address	Property Address 2	Mailing 1	Door to Door Effort 1 by Accura	Mailing 2	Mailing 3	Status Site Visit 9/16/2015	Status Site Visit 2/11/2016	Status Site Visit 11/28/2017	Status Site Visit 6/19/2018	Status Site Visit 2/20/2020	Status Site Visit 3/11/2021 & 4/29/2021
CV-1173	Residential - Vacant Lot	012200134037002000	3351	28th Ave N	3/22/2013		7/13/2015		Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-1175	Residential - Vacant Lot	012200134037001000	3361	28th Ave N	3/6/2013		7/13/2015		Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-1194	Residential - Vacant House	012200134030011000	3446	28th Ave N	3/6/2013		7/13/2015		Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-1200	Residential - Vacant Lot	012200134034009000	3109	29th Ave N	3/6/2013		7/13/2015		Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-1204	Residential - Vacant Lot	012200134034007001	3117	29th Ave N	3/6/2013		7/13/2015		Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-1239	Residential - Vacant Lot	012200134032005001	3311	29th Ave N	3/22/2013		7/13/2015		Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-1265	Residential - Vacant Lot	012200134029012000	3440	29th Ave N	3/6/2013		7/13/2015		Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-1267	Residential - Vacant Lot	012200133001067000	2706	29th St N	3/22/2013		7/13/2015		Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-1306	Residential - Vacant Lot	012200134026007000	2909	33rd Pl N	3/6/2013		7/13/2015		Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29
CV-1327	Residential - Vacant Lot	012200134025005000	2915	33rd St N	3/22/2013		7/13/2015		Status unchanged since 9/16	Status unchanged since 2/11	Status unchanged since 11/28	Status unchanged since 6/19	Status unchanged since 2/20	Status unchanged since 4/29